

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY AUSBORN,

Plaintiff,

v.

CHCF, et. al.,

Defendants.

No. 2:20-cv-593 EFB P

ORDER

Plaintiff, a state prisoner, proceeds without counsel in this action brought pursuant to 42 U.S.C. § 1983. In addition to filing two complaints (ECF Nos. 1, 5), he has also filed two applications to proceed in forma pauperis (ECF No. 2, 6). The court grants the first application and deny the latter as moot. Further, for the reasons stated below, plaintiff's first amended complaint is dismissed with leave to amend.

Application to Proceed In Forma Pauperis

The court has reviewed the plaintiff's application (ECF No. 2) and trust fund account (ECF No. 4) and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, plaintiff's request to proceed in forma pauperis is granted.

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## Screening

### I. Legal Standards

Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations are true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to support cognizable legal theories. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 562-563 (2007).

### II. Analysis

The court has reviewed plaintiff’s first amended complaint and, due to plaintiff’s handwriting, syntax, and lack of organization, can make little sense of it. The court can gather that plaintiff alleges that he suffers from multiple sclerosis and that, in some fashion, his medical

needs for that condition have been unmet by the providers at his institution of incarceration. ECF No. 5 at 16. But, owing to the deficiencies identified *supra*, the specifics of his claims totally elude the reader. The court cannot tell how each defendant is alleged to have violated plaintiff's rights or even what discrete violations are alleged to have occurred. Rule 8 of the Federal Rules of Civil Procedure requires a complaint to allege facts which put each defendant on notice as to the claims against her. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The complaint at bar does not meet this requirement.

Plaintiff's first amended complaint will be dismissed with leave to amend to remedy the foregoing deficiencies.

### III. Leave to Amend

Plaintiff is cautioned that any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also include any allegations based on state law that are so closely related to his federal allegations that "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

The amended complaint must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See George v. Smith*, 507 F.3d 605 at 607.

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter being treated thereafter as non-existent.") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).


Any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims. He should also take pains to ensure that his amended complaint is as legible as possible. This refers not only to penmanship, but also spacing and organization. Plaintiff should carefully consider whether each of the defendants he names actually had involvement in the constitutional violations he alleges. A “scattershot” approach in which plaintiff names dozens of defendants will not be looked upon favorably by the court.

Conclusion

Accordingly, it is ORDERED that

1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED;
2. Plaintiff’s second application to proceed in forma pauperis (ECF No. 6) is DENIED as moot;
3. Plaintiff’s first amended complaint (ECF No. 5) is dismissed with leave to amend within 30 days from the date of service of this order; and
4. Failure to file an amended complaint that complies with this order may result in the dismissal of this action for the reasons stated herein.

DATED: April 23, 2020.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE